FINANCIAL INSTITUTIONS – SINGLE SALES FACTOR APPORTIONMENT SPECIAL REGULATION 7A

The following special rules are established to provide a uniform methodology for determining the allocation and apportionment of income for financial institutions.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5) C.R.S. and regulations thereunder and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
 - a) Apportionment and Allocation.
 - i) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this regulation. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of §39-22-303.5(5), C.R.S. and regulations thereunder. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this regulation.
 - ii) All business income (income that is includable in the apportionable income tax base) shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is the taxpayer's sales factor (as described in subsection c of this regulation).
 - iii) The sales factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for the taxable year.
 - b) **Definitions**. As used in this regulation, unless the context otherwise requires:
 - i) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.
 - ii) "Borrower or credit card holder located in this state" means:
 - (1) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or
 - (2) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.
 - iii) "Commercial domicile" means:
 - (1) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

- (2) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of this regulation to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.
- iv) "Credit card" means credit, travel or entertainment card.
- v) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.
- vi) "Financial institution" means:
 - (1) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq., as amended), or registered as a savings and loan holding company under the Federal National Housing Act (12 U.S.C. 1701, as amended);
 - (2) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sections 21 et seq.;
 - (3) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(b)(1);
 - (4) Any bank, savings association, or thrift institution incorporated or organized under the laws of any state;
 - (5) Any corporation organized under the provisions of 12 U.S.C. sections 611 to 631;
 - (6) Any agency or branch or a foreign depository as defined in 12 U.S.C. section 3101;
 - (7) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;
 - (8) Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in subsections (1) through (7) above other than an insurance company taxable under §10-3-209, C.R.S.;
 - (9) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall

mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases" or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. (The reference to Financial Accounting Standards Board Statement No. 13 does not include later amendments or editions of this referenced material. Certified copies of this material are available for review in the executive director's office of the Department of Revenue at 1375 Sherman Street, Denver, Colorado 80261. Additionally, a copy of this material may be examined at any state publications depository library. For this classification to apply,

- (a) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent (50%) requirement; and
- (b) gross income from incidental or occasional transactions shall be disregarded;
- (10) Any other person or business entity, other than an insurance company taxable under §10-3-209, C.R.S., that derives more than fifty percent (50%) of its gross income from activities that a person described in subsections (1) through (7) and (9) above is authorized to transact. For the purpose of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items.
- (11) The executive director is authorized to exclude any person from the application of subsection (10) upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subsections (1) through (7) and (9) above.
- vii) "Loan" means an extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.
- viii) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
- ix) "Loan servicing fees" include all fees not in the nature of interest charged for any service or recovery of any cost in connection with a loan.
- x) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a

credit card is accepted in payment for merchandise or services sold to the card holder.

- xi) "Participation" means an extension of credit in which an undivided ownership interest is held on a *pro-rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- xii) "*Person*" means an individual, estate, trust, partnership, corporation and any other business entity.
- xiii) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled.
- xiv) "Real property owned" and "tangible personnel property owned" mean real and tangible personal property, respectively, (1) on which the taxpayer may claim depreciation for federal income tax purposes, or (2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or other property acquired in lieu of or pursuant to a foreclosure.
- "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.
- xvi) "Sales" and "Revenue" mean gross sales or gross receipts, unless otherwise required by context.
- xvii) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and territory or possession of the United States or any foreign country, except where the context otherwise requires.
- xviii) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- xix) "Taxable" means either:
 - (1) that a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or
 - (2) that another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not impose such taxes upon the taxpayer.
- "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

c) The Sales Factor.

- i) General. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. The method of calculating sales for purposes of the denominator is the same as the method used in determining sales for purposes of the numerator. The sales factor shall include only those sales described herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.
- ii) Revenue from the lease of real property. The numerator of the sales factor includes revenue from the lease or rental of real property owned by the taxpayer if the property is located within this state or revenue from the sublease of real property if the property is located within this state.
- iii) Revenue from the lease of tangible personal property.
 - (1) Except as described in paragraph ii of this subsection, the numerator of the sales factor includes revenue from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.
 - (2) Revenue from the lease or rental of transportation property owned by the taxpayer is included in the numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of revenue that is to be included in the numerator of this state's sales factor is determined by multiplying all the revenue from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.
- iv) Interest from loans secured by real property.
 - (1) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the sales described in this subsection are included in the numerator of the sales factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the sales described in this subsection shall be included in the numerator of the sales factor if the borrower is located in this state.
 - (2) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

- v) Interest from loans not secured by real property. The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.
- vi) Net gains from the sale of loans. The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.
 - (1) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection iv of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
 - (2) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection v of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
- vii) Revenue from credit card receivables. The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and revenue from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.
- viii) Net gains from the sale of credit card receivables. The numerator of the sales factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection vii of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.
- ix) Credit card issuer's reimbursement fees. The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection vii of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.
- x) Revenue from merchant discount. The numerator of the sales factor includes revenue from merchant discount if the commercial domicile of the merchant is in this state. Such revenue shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.
- xi) Loan servicing fees.
 - (1) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the

numerator of which is the amount included in the numerator of the sales factor pursuant to subsection iv of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

- (2) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection v of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
- (3) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor shall include such fees if the borrower is located in this state.
- xii) Revenue from services. The numerator of the sales factor includes revenue from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the sales factor includes revenue from services not otherwise apportioned under this section to the extent the income-producing activity is performed in this state based on cost of performance.
- xiii) Revenue from investment assets and activities and trading assets and activities.
 - (1) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities shall be included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (a) and (b) of this paragraph, the sales factor shall include the amounts described in such subparagraphs.
 - (a) The sales factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.
 - (b) The sales factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest amounts paid in lieu of dividends, and losses from such assets and activities.
 - (2) The numerator of the sales factor includes interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities described in paragraph (1) of this subsection that are attributable to this state.

- (a) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
- (b) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (a) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.
- (c) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in subparagraph (a) or (b) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (b) of paragraph (1) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are property assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
- (d) For purposes of this paragraph, average value shall be determined as follows:
 - (i) Value of property owned by the taxpayer.
 - The value of tangible personal property owned by the taxpayer is the original cost or other basis of such property for Federal income tax purposes without regard to depreciation or amortization.
 - 2. Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for Federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged-off for Federal income tax purposes shall be treated as charged-off for purposes of this section.

- Credit card receivables are valued at this outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for Federal income tax purposes, the portion of the receivable charged-off is not outstanding.
- (ii) Average value of tangible personal property owned by the taxpayer. The average value of tangible personal property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the executive director may require averaging on a more frequent basis. The taxpaver may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the executive director or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the executive director or the executive director requires a different method of determining average value.
- (3) In lieu of using the method set forth in paragraph (2) of this subsection xiii), the taxpayer may elect, or the executive director may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.
 - (a) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.
 - (b) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (a) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.
 - (c) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and

foreign currency transactions (but excluding amounts described in subparagraphs (a) or (b) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (b) of paragraph (1) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

- (4) If the taxpayer elects or is required by the executive director to use the method set forth in paragraph (3) of this subsection xiii), it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the executive director to use, or the executive director requires a different method.
- or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.
- xiv) All other revenue. The numerator of the sales factor includes all other revenue pursuant to the provisions of §39-22-303.5, C.R.S.
- xv) Attribution of certain sales to commercial domicile. All sales which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the sales factor, if the taxpayer's commercial domicile is in this state.
- 4) Alternative Methodologies. If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.